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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77377330
Applicant	Dune Medical Devices Ltd.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:

Dune Medical Devices Ltd.

Serial No. 77/377,330q

Filed: January 22, 2008

Mark: **MARGINPROBE**

Trademark Examining Attorney:
J. Brendan Regan
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APPLICANT'S REPLY BRIEF

Applicant, by its attorneys, hereby submits this reply brief in further support of its appeal filed September 17, 2010 and in response to the Examiner's November 9, 2010 Appeal Brief.

Contrary to the Examiner's assertions, the mark MARGINPROBE for "medical device, namely, a tissue characterization device for use in surgical procedures" in Class 10 is not a descriptive mark and would not be immediately understood by prospective customers as "probes for use at (or ascertaining) the margins of tumors."

As previously briefed, there is no dictionary definition for MARGINPROBE. Further, there are number of third party composite marks that include the term PROBE within the mark for medical devices in Class 10, evidencing the fact that PROBE formative marks for said types of goods are considered suggestive rather than descriptive. Moreover and most significantly, Applicant's medical device under the subject mark does not function as a determinant of margins, or a device to obtain margins, as the Examiner has asserted. Applicant's device is used for the purposes of selecting abnormal tissue for excision in a lumpectomy specimen.

The Examiner incorrectly states that Applicant does not dispute the Examiner's description of its device. In its response to the first Office Action, as well as its Appeal Brief, Applicant has time and again stated that its device is NOT a probe that indicates the presence or absence of a margin. The fact that the margins of potentially abnormal tissue that has been removed via a lumpectomy may be eventually measured, and that ultimately margin information may be provided, does not render the applied for mark a descriptive mark.

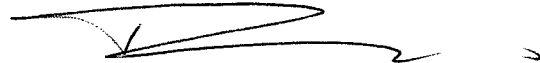
The Examiner's pained analysis and assessment flies in the face of the correct test for descriptiveness. MARGINPROBE does not *directly* or *immediately* describe the subject device's function, characteristic, use or ingredient. MARGINPROBE is a suggestive term that requires substantial mature thought or imagination on the part of the prospective purchaser to arrive at an understanding of the nature of the subject device.

For the foregoing reasons, it is respectfully requested that Section 2(e)(1) descriptiveness refusal for registration be reversed and Applicant's mark passed to publication.¹

Date: November 29, 2010

Respectfully submitted,

Dune Medical Devices Ltd.



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¹ Applicant requests that , in the unlikely event the Board elects to affirm the Section 2(e), refusal, the application should in such case be amended to the Supplemental Register with the mark then proceeding to registration on the Supplemental Register.